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IN THE

Supreme Court of the United States

October Term, 1941

No. 1229

KLAXON COMPANY

Petitioner,

v.

STENTOR ELECTRIC MANUFACTURING COMPANY, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR STENTOR ELECTRIC MANUFACTURING COMPANY, INC., IN OPPOSITION

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STATUTES

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Statement

This is a suit for the breach of a contract made and to be performed in New York which was tried before a jury in the Federal Court for the District of Delaware. Jurisdiction was grounded on diversity of citizenship. Judgment was entered for the plaintiff following the verdict. Upon the plaintiff's application, the District Court added interest from the date of the commencement of the suit in accordance with the provisions of Section

480 of the New York Civil Practice Act (30 Fed. Supp. 425). Upon appeal to the Circuit Court of Appeals for the Third Circuit the judgment was affirmed, both as to the jury's award and as to the addition of interest (115 Fed. (2) 268). *Certiorari* was granted by this Court limited to the question of the propriety of the addition of interest (312 U. S. 674).

This Court (*Klaxon Company* v. *Stentor Electric Manufacturing Company,* October Term, 1940, No. 741; 313 U. S. 487) reversed, on the ground that in applying the New York statute allowing interest, the Circuit Court had proceeded upon its "independent determination of the 'better view'" of the law "without regard to Delaware law, for no Delaware decision or statute was cited or discussed" in the opinion of the Circuit Court.

In reversing, this Court said,

> "We are of opinion that the prohibition declared in Erie R. Co. *v.* Tompkins, 304 U. S. 64, against such independent determinations by the federal courts extends to the field of conflict of laws. The conflict of laws rules to be applied by the federal court in Delaware must conform to those prevailing in Delaware's state courts."

Accordingly, the case was "remanded to the Circuit Court of Appeals for decision in conformity with the law of Delaware."

Obedient to the direction of this Court's mandate, the Circuit Court of Appeals has now inquired into the law of Delaware and has concluded that the Delaware rule of conflicts required the addition of interest pursuant to Section 480 of the New York Civil Practice Act (125 Fed. (2) 820).

A second petition for *certiorari* to review that judgment has been filed.

ARGUMENT

I

Petitioner's primary reason for seeking *certiorari* is so the Court below may "exercise an independent judgment as to the law to be applied" instead of being controlled by Delaware law as now ascertained by it (Petition, p. 14). It was precisely for such "independent determination" that this Court reversed on the prior review (313 U. S. 496). The granting of the petition would result in a reinstatement of the Circuit Court's former opinion, which represents its "independent judgment" on the question at issue.

Moreover, the adoption of the petitioner's contention would result in drastic limitation and weakening of the rule of *Erie* v. *Tompkins*, 304 U. S. 64, since in practice there would hardly ever be a case in which counsel could not find some ground for contending that the state decisions which had been relied on below were not "decisive authority."

II

Petitioner devotes its first point (pp. 5 to 19) to the proposition that the decision below is in conflict with *Powell* v. *Maryland Trust Co.*, 125 Fed. (2) 260 (C. C. A. 4) and *Maki* v. *George R. Cooke Co.*, 124 Fed. (2) 663 (C. C. A. 6).

Its argument is that the *Powell* and *Maki* cases hold that in the absence of what the petitioner terms "decisive authority," a Federal Court may, with respect to conflicts of laws, "exercise an independent judgment as to the law to be applied" (p. 14), and that in the instant case, the Court below should have exercised such "independent

judgment'' because there was no ''decisive authority'' in the Delaware decisions.

The *Powell* and *Maki* cases do not so hold, and there is no conflict between those cases and the case at bar. In neither of those cases did the Court make an ''independent determination'' of law, such as this Court has condemned, or ''exercise an independent judgment as to the law to be applied.'' In each of them, state law was sought and applied.

The *Powell* case, which was tried in the Federal Court of Virginia, presented a question as to the proper disposition of stock dividends on stock pledged under a trust mortgage, delivered and accepted in Maryland, which reserved ''dividends'' to the pledgor. The Court begins its opinion on the law as follows (125 Fed. (2) 265):

> ''The mortgage was delivered to the first mortgage trustee and accepted by it in Baltimore, Md., and the shares of stock which were pledged were delivered to it there; and there is no serious question but that the law of Maryland is the law properly applicable in determining the rights of the parties with respect to the stock dividend.''

Subsequently, the Court says (pp. 265-6):

> ''The precise question is not covered by any Maryland decision; but it is worthy of note that in the case of Smith *v.* Hooper, 95 Md. 16, 51 A. 844, 846, 54 A. 95, Chief Judge McSherry quotes with approval from Spooner *v.* Phillips, 62 Conn. 62, 24 A. 524, 16 L. R. A. 461, that 'the word ''dividend,'' if unqualified * * * signifies dividends payable in money'.''

The Court then goes on to consider the other authorities cited in *Smith* v. *Hooper,* 95 Md. 16, such as *Gibbons* v. *Mahon,* 136 U. S. 549, and other authorities stemming from *Gibbons* v. *Mahon,* and the doctrines laid down in those cases, and concludes (p. 268):

> ''In the light of these authorities as well as of the circumstances surrounding the transaction, we

> think there can be no doubt but that the reservation of dividends on the stock pledged should be construed not to include the stock dividend, and that this should go, under the general principles of the law relating to pledges, *as recognized in Maryland,* to the first mortgage trustee as an essential part of the thing pledged with it." (Italics ours.)

In reaching its conclusion as to Maryland law, the Court refused to give weight to Maryland decisions concerning the apportionment of stock dividends between life tenants and remaindermen, deeming them too remote to be indicative of how a Maryland court would determine the question as between pledgor and pledgee. The dissenting Judge thought those apportionment cases persuasive. Such conflict as to what particular cases are in point in determining a question of state law, is not a conflict raising any question as to the doctrine of *Erie* v. *Tompkins,* or *Klaxon* v. *Stentor.*

In the *Maki* case, the issue was whether in an action arising under a Minnesota statute and tried in Michigan, the Michigan or Minnesota Statute of Limitations should apply. The Court determined that under Michigan law it would be no violation of Michigan public policy to enforce the Minnesota statute, including the Minnesota Statute of Limitations. The Court did not "exercise an independent judgment as to the law to be applied." It is very specific on that point. It begins its opinion on the applicable law (124 Fed. (2) 664-5):

> "We are cognizant of the doctrine that in diversity of citizenship cases, the rules of conflict of laws which govern are the rules of the state in which the Federal Court sits. Klaxon Co. *v.* Stentor Elec. Mfg. Co., 313 U. S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477; Griffin *v.* McCoach, 313 U. S. 498, 61 S. Ct. 1023; 85 L. Ed. 1481, 134 A. L. R. 1462."

Thus, in the *Powell* case and the *Maki* case, as well as in the case at bar, the rules of *Erie* v. *Tompkins,* 304 U. S.

64, and *Klaxon* v. *Stentor*, 313 U. S. 487, have been applied, and there is no conflict between them as claimed by petitioner.

Petitioner's theory of alleged conflict between the Circuits also breaks down at another point. The petitioner's argument is premised upon the proposition that in the case at bar, the Court below did not have before it "decisive authority." By "decisive authority" the petitioner apparently means a case so far on all fours, that no astuteness of counsel could possibly find claimed grounds for distinguishing it. The rule of *Erie* v. *Tompkins* is not, however, thus limited (*West* v. *American Tel. & Tel. Co.*, 311 U. S. 223). The Court below had before it an abundance of relevant local authority, giving clear guidance as to state law on the point before it. We think that, if anything, the Court below understated the strength of that authority; the petitioner claims that that authority was not as strong as the Court considered it it. That raises an issue as to state law, but it does not present a conflict between Circuits.*

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* To fit the case at bar into its theory, petitioner states (p. 10) that the Court below "found the *Nelson* case to be decisive authority for *plaintiff's* position," and it then proceeds upon an attempt to show that the *Nelson* case is not decisive authority. Despite petitioner's efforts to distinguish it, that case is unimpeachable Delaware authority for the proposition that "the obligation to pay damages for the non-performance of the contract is a matter of substantive right, imposed by the law as a substitute for performance, and should therefore be measured by the law of the place where such performance was promised." The Court below thought that the *Nelson* case, read with the other Delaware cases, establishes that under Delaware law moratory interest is included in the damages and is governed by the *lex loci*. The petitioner thinks otherwise; that, however, is no ground for *certiorari*.

Moreover, the petitioner ignores the greater part of the Delaware authority considered by the Court below in arriving at its determination. Thus, for example, petitioner carefully avoids mentioning *Barstow* v. *Thatcher*, 3 Houst. 32, which was a Delaware conflicts case which held squarely that the *lex loci* ruled the rate of moratory interest awarded in Delaware. If the rate of interest is governed by the *lex loci*, certainly the right to interest would be governed by the same law.

III

Petitioner devotes its second point (pp. 19-21) to the proposition that this Court, upon its prior review of this case, enunciated as a secondary ground for reversal a doctrine that if the Federal Courts found no "state rule" on the conflicts of laws question, a so-called Federal rule was to be applied. This second ground is attempted to be spelled out by quotation of portions of two widely separated sentences from the Court's prior opinion which are taken out of context and placed in inverse order.

IV

Petitioner devotes its third point (pp. 21-26) to the proposition that the decision herein conflicts with this Court's decisions in *Erie* v. *Tompkins*, and *West* v. *American Tel. & Tel. Co.*, 311 U. S. 223, because the Court below is alleged not to have followed the "considered dicta of inferior state courts." The decisions of the inferior courts to which petitioner refers, namely *Jacobs* v. *Murray*, 113 Atl. 803, 1 W. W. Harr. 209, and *First International Pictures, Inc.* v. *F. C. Pictures Corp.*, 262 App. Div. (N. Y.) 21, were considered by the Court below and are discussed and distinguished in its opinion. Failure of the Court below to follow them was not because they were decisions or dicta of inferior courts, but because they were found to be not in point and were deemed to be less persuasive than the other cases.

V

Petitioner devotes its fourth and last point (pp. 26-27) to the proposition that since *First International Pictures, Inc.* v. *F. C. Pictures Corp.*, *supra*, was decided under the New York statute which was applied in this case, it be-

comes *ipso facto* an applicable and controlling interpretation of that statute for the purposes of the case at bar. The Circuit Court of Appeals, however, found that the *First International Pictures, Inc.*, case is wholly off the point for the case at bar and entirely distinguishable from it. The District Court and the Circuit Court of Appeals, in applying the New York statute as they did, had before them decisive New York authority sustaining such application. See the prior opinion herein of the Circuit Court of Appeals, 115 Fed. (2) 268, at 275-7, and the opinion of the District Court, 30 Fed. Supp. 425 at 432.

Conclusion

The decision of the Court below is correct. The case presents no question of general importance. The decision of the Court below is not in conflict with the decisions of this Court or with the decisions of other Circuit Courts of Appeals. The petition should be denied.

Respectfully submitted,

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